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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**
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11 ANDRE RIDER,

No. CIV S-04-1809-GEB-CMK-P

12 Petitioner,

13 vs.

FINDINGS AND RECOMMENDATIONS

14 S. KERNAN,

15 Respondent.
16 _____/

17 Petitioner, a state prisoner proceeding pro se, brings this petition for a writ of
18 habeas corpus pursuant to 28 U.S.C. § 2254. Currently pending before the court are petitioner's
19 petition (Doc. 1) and petitioner's motion for an order staying the instant proceedings and holding
20 consideration of his claims in abeyance pending exhaustion of state remedies ("stay-and-
21 abeyance order") (Doc. 13). Also before the court is respondent's motion to dismiss (Doc. 9).

22 The instant petition raises five claims.¹ Petitioner initially raised all five claims to
23 the state court in his initial brief on direct appeal. The Court of Appeal rejected his claim and
24 affirmed his conviction and sentence. Petitioner abandoned two of the claims by not raising
25 _____


26 ¹ Petitioner references a sixth claim in his stay-and-abeyance order. No such claim exists.

1 them in his brief to the California Supreme Court. The court notes that petitioner was
2 represented by counsel at all stages of his state court proceedings. In his motion for a stay-and-
3 abeyance order, petitioner fails to establish good cause for failing to present all of the claims
4 raised here to the highest state court. Given that petitioner was represented by counsel at his
5 state court proceedings, it appears that he purposefully chose not to pursue two of his claims. He
6 cannot now ask this court to consider claims which he chose not to present to the state court.
7 Therefore, petitioner's motion for a stay-and-abeyance order should be denied.

8 Based on the foregoing, the undersigned recommends that Petitioner's motion for
9 a stay-and-abeyance order be denied.

10 These findings and recommendations are submitted to the United States District
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within ten days
12 after being served with these findings and recommendations, any party may file written
13 objections with the court. The document should be captioned "Objections to Magistrate Judge's
14 Findings and Recommendations." Failure to file objections within the specified time may waive
15 the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

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17 DATED: February 6, 2006.

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20 **CRAIG M. KELLISON**
21 UNITED STATES MAGISTRATE JUDGE
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